

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Communications, Energy, and Public Utilities Committee

BILL: SB 100

INTRODUCER: Senator Siplin

SUBJECT: Unclaimed Deposits Held By Utilities

DATE: January 17, 2012 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Wiehle | Carter | CU | Favorable |
| 2. | | | EP | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill would require that unclaimed deposits held by utilities be deposited annually into the Grants and Donations Trust Fund within the Department of Economic Opportunity, as the successor to the Department of Community Affairs, to supplement funds of the Low-Income Home Energy Assistance Program which are used to assist low-income households in meeting the costs of home heating and cooling bills. These funds would be administered through the local provider agencies that administer the Low-Income Home Energy Assistance Program.

The bill substantially amends section 717.108 of the Florida Statutes.

II. Present Situation:

Chapter 717 of the Florida Statutes provides for disposition of unclaimed property. In general, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the chapter. The time period for utility deposits is different. Any deposit made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, including any interest less any lawful charges, that remains unclaimed by the owner for more than 1 year after termination of the services for which the deposit or advance payment was made is presumed unclaimed. Certain types of unclaimed property, including security deposits, having a value of less than \$10 are not to be presumed unclaimed.

Every person holding funds or other property, tangible or intangible, presumed unclaimed and subject to custody as unclaimed property must file an annual report with the Department of

Financial Services (DFS or department) that includes information on the identity and last known address of the apparent owner of the property, a description of the property, and the date the property became payable or returnable. At the same time the report is filed, the holder must deliver to the department all unclaimed property required to be reported.

Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. The department is required to use cost-effective means to make at least one active attempt to notify owners of unclaimed property accounts valued at more than \$250 with a reported address or taxpayer identification number. All other apparent owners get indirect or passive notice such as publication of the names of owners in the newspaper, on television, on the Internet, or through other promotional efforts.

Speaking generally, after the receipt of unclaimed property the department sells all non-cash property to the highest bidder at public sale on the Internet or at a specified physical location wherever in the judgment of the department the most favorable market for the property involved exists. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. The department also has the discretion to withhold from sale any unclaimed property that the department deems to be of benefit to the people of the state. Finally, if in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale and may be disposed of as the department determines appropriate.

All funds received, including the proceeds from sales, are deposited into the Unclaimed Property Trust Fund. The department is allowed to retain an amount not exceeding \$15 million from which it must make prompt payment of claims it allows and must pay the costs it incurred in administering and enforcing the chapter. All remaining funds received must be deposited into the State School Fund.

The department must record the name and last known address of each person appearing from the holder's reports to be entitled to the unclaimed property in the total amounts of \$5 or greater; the name and the last known address of each insured person or annuitant; and with respect to each policy or contract listed in the report of an insurance corporation, its number, the name of the corporation, and the amount due. Any person claiming an interest in any property delivered to the department may file a claim for the property. The department is required to make a determination on the claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds if it has been sold by the department.

In January, 2009, the Florida Department of Community Affairs (DCA), in collaboration with the Florida Energy Affordability Coalition, filed a report with the Legislature on affordability of energy in Florida. The report made ten proposals on how to address affordability issues. Among them were a proposal to consider earmarking unclaimed utility deposits to supplement energy affordability assistance and energy efficiency programs rather than escheating the money to the state's general treasury and a proposal to create a state Energy Affordability Trust Fund, to be administered by DCA, charged with receiving and distributing funds such as these for use in low-income energy assistance, weatherization, and energy conservation education initiatives.

In the 2011 Regular Session, the Legislature amended s. 409.508, F.S., to provide that the newly created Department of Economic Opportunity (DEO), not DCA, is to administer the Low Income Home Energy Assistance Program (LIHEAP).¹ This program provides federal money to non-profit agencies and local governments so they can assist low-income families with home heating and cooling costs. DEO applies for funding from the federal government and distributes it directly to local agency providers and non-profit agencies who then determine who will receive assistance. DEO monitors the local agency providers to ensure that they administer the funding in compliance with state and federal laws and rules and provides them technical assistance to help them comply with these requirements.

III. Effect of Proposed Changes:

The bill amends s. 717.108, F.S., to require that unclaimed deposits held by utilities be deposited annually into the Grants and Donations Trust Fund within the Department of Community Affairs, or the Department of Community Affairs' successor agency,² to supplement funds of the Low-Income Home Energy Assistance Program which are used to assist low-income households in meeting the costs of home heating and cooling bills. These funds would be administered through the local provider agencies that administer the Low-Income Home Energy Assistance Program.

Under the 2011 legislation, the Department of Economic Opportunity is the successor agency to the Department of Community Affairs and would be performing these functions.

The bill would take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may be subject to constitutional challenge on equal protection grounds. Because owners, or the heirs of owners, of unclaimed utility deposits would no longer have the right to claim and recover the funds, they could claim that, as a class, they are being treated differently than owners of all other types of unclaimed property.

¹ s. 302, ch. 2011-142, Laws of Florida.

² s. 3, ch. 2011-142, Laws of Florida, transfers a number of trust funds from DCA to DEO, including the Grants and Donations Trust Fund, (2)(a)5.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unclaimed utility deposits would no longer be available for the owners to reclaim.

There would be additional funding for the LIHEAP program.

C. Government Sector Impact:

According to the Department of Financial Services (DFS), rulemaking likely will be required to implement how and when utilities would report and remit the funds to DEO, and, perhaps, how DFS would handle inquiries from owners no longer entitled to recover unclaimed utility deposits. Rulemaking will likely be required of DEO and the local provider agencies on how the program will be implemented.

DFS also states that administrative changes will be required of business and local governmental entities to separate unclaimed utility deposit accounts from other types of unclaimed property, and report and remit separate annual reports to DFS and to DEO. Both DFS and DEO would be required to change and develop procedures for informing utilities and governmental entities of the changes and how to administer them.

According to DFS, over the last ten fiscal years, the Department of Education State School Trust Fund has received an average of \$4.77 million per year from unclaimed utility deposits. Also, during that same time, 235,683 Florida citizens have received claims payments totaling \$10.7 million in recovered utility deposits. The bill will result in the loss of this revenue to the State School Trust Fund and citizens being unable to recover their utility deposits. The table below sets forth DFS’ data on claims paid over this ten-year period.

| Deposits Fiscal Year | Accounts Received | Amount Received | Number of Claims Paid | Amount Paid In Claims |
|----------------------|-------------------|------------------------|-----------------------|------------------------|
| 2001-02 | 14,901 | \$2,450,596.56 | 7,498 | \$629,436.09 |
| 2002-03 | 29,390 | \$4,217,230.50 | 22,411 | \$1,231,556.72 |
| 2003-04 | 31,026 | \$4,112,642.04 | 21,607 | \$1,157,871.66 |
| 2004-05 | 158,730 | \$11,885,838.64 | 62,449 | \$1,941,476.89 |
| 2005-06 | 111,697 | \$4,981,489.76 | 31,696 | \$1,045,581.88 |
| 2006-07 | 20,181 | \$2,326,479.99 | 12,188 | \$651,698.90 |
| 2007-08 | 48,084 | \$4,005,122.16 | 23,918 | \$971,275.79 |
| 2008-09 | 55,653 | \$4,601,439.16 | 23,849 | \$1,246,702.96 |
| 2009-10 | 37,502 | \$4,477,642.88 | 10,430 | \$881,162.85 |
| 2010-11 | 44,230 | \$4,723,950.69 | 19,637 | \$944,453.47 |
| Total | 551,394 | \$47,782,432.38 | 235,683 | \$10,701,217.21 |

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
